UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JONATHAN SANTIAGO, Plaintiff, v. THOMAS LAFFERTY, in his individual capacity, and THE CITY OF LOWELL, Defendants.	Civil Action No. 13-12172

COMPLAINT

INTRODUCTION

1. This is a civil rights action for an unlawful arrest and malicious prosecution that resulted from the City of Lowell's failure to supervise the widespread misuse of confidential informants in the Lowell Police Department. Plaintiff Jonathan Santiago was arrested on February 21, 2012, after a confidential informant planted drugs inside the gas cap compartment of Mr. Santiago's car. The confidential informant had worked closely with Defendant Thomas Lafferty, a detective in the Lowell Police Department's Special Investigations Section. Defendant Lafferty knew that the confidential informant had planted evidence. Defendant Lafferty concealed his use of the informant to prevent Mr. Santiago and others from learning how the illegal drugs had been placed in Mr. Santiago's car.

2. Defendant Lafferty's conduct was a result of the City of Lowell's systemic failure to supervise the use of confidential informants within its police department. The Lowell Police Department allowed police officers in the Special Investigations Section ("SIS"), also known as the "Vice Squad," to use informants who were planting evidence on people. For more than twenty

years, the Lowell Police Department ignored its own written policies on the use of confidential informants. Officers in the SIS were led to believe that this conduct was acceptable because the ends justified the means. The City had a policy or custom of tolerating violations of people's constitutional rights in order to obtain convictions. As a result of the City of Lowell's policies and customs, Mr. Santiago was arrested, charged, and held in custody for a crime he did not commit.

JURISDICTION

3. This action is brought pursuant to 42 U.S.C. §1983 and §1988 and the Fourth and Fourteenth Amendments to the U.S. Constitution. Title 28 U.S.C. §1331 and §1343 provide federal question jurisdiction over all federal claims, and 28 U.S.C. §1367 provides supplemental jurisdiction over state law claims.

PARTIES

4. Plaintiff Jonathan Santiago was at all times relevant to this complaint a resident of Middlesex County, Massachusetts.

5. Defendant Thomas Lafferty was at all times relevant to this complaint a duly appointed police officer of the Lowell Police Department. Defendant Lafferty was a detective in the Lowell Police Department Special Investigations Section at all times relevant to this complaint. His actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts. He is sued in his individual capacity.

6. Defendant City of Lowell is a duly organized municipal corporation under the laws of the Commonwealth of Massachusetts.

FACTS

7. On February 21, 2012, Plaintiff Jonathan Santiago was living in Lowell.

8. Mr. Santiago was friendly with a man in Lowell who shall be identified in this complaint as "FA." Mr. Santiago knew FA from seeing him occasionally at local bars.

9. Unbeknownst to Mr. Santiago, FA had worked closely with Defendant Thomas Lafferty and other members of the Lowell Police Department as a confidential informant for approximately ten years.

10. On February 21, 2012, Mr. Santiago was leaving a friend's apartment in Lowell when he saw FA. FA invited Mr. Santiago to join him at a local bar for a drink.

11. Mr. Santiago suggested that they ride there together in FA's car, but FA insisted that Mr. Santiago take his own car and follow FA to the bar.

12. Unbeknownst to Mr. Santiago, FA had put over 26 grams of a chunky white powdery substance that included cocaine inside the gas cap compartment of Mr. Santiago's car. FA either placed the substance in Mr. Santiago's car himself or he worked together with another confidential informant who shall be identified as "FB" to have the substance placed in Mr. Santiago's car. The substance was in a plastic bag and hidden inside a sock.

13. Mr. Santiago followed FA through Lowell. He drove normally; he did not circle an area as he drove, nor did he cross over the yellow center line.

14. Based on information provided by FA, Defendant Lafferty and other SIS officers including Detective Rivera and Detective Lavoie were waiting for FA to drive by with Mr. Santiago following FA.

15. Detective Rivera turned on the lights and siren in his unmarked police car and pulled over Mr. Santiago's car. All three officers approached the car.

16. Defendant Lafferty knew that drugs were hidden behind the gas cap cover of Mr. Santiago's car because FA told him this would be the case.

17. To make it appear that he independently found the drugs, Defendant Lafferty called in a police dog to search Mr. Santiago's car. The dog alerted at the gas cap on Mr. Santiago's car. An SIS officer removed the cocaine substance that FA or FB had hidden.

18. Defendant Lafferty arrested Mr. Santiago and charged him with the felony of trafficking in cocaine over 28 grams because the police officers weighed the substance at 28.2 grams. The charge was later reduced to trafficking in cocaine between 14 and 28 grams because the crime lab found the weight to be 26.79 grams. Defendant Lafferty also charged Mr. Santiago with trafficking in cocaine in a school zone because Defendant Lafferty and the other Lowell police officers chose to stop Mr. Santiago's car as he was driving near a school. At the time of Mr. Santiago's arrest, the trafficking charge carried a mandatory minimum prison sentence of three years with a possibility of up to fifteen years.

19. Mr. Santiago was handcuffed and transported to the Lowell police station. He was held for several hours before he was released on bail.

20. When he went to court the next morning, the judge increased his bail to $10,000 cash. Mr. Santiago was held in a cell in the courthouse for several hours until a lawyer acting on his behalf got the bail amount reduced to $1,000. Mr. Santiago then posted bail and was released from custody.

21. Mr. Santiago was innocent of the charges. He was not involved in drug dealing.

22. Mr. Santiago was shocked and scared when he was arrested. He did not know drugs had been planted in his car. He knew someone had set him up but he did not know who or why. Mr. Santiago stopped driving a car because he feared that someone would again plant an illegal substance in his car.

23. Although he was innocent, Mr. Santiago feared that he would be convicted of drug trafficking because the drugs were found in his car. He thought it was likely that the frame-up would work. He felt fated to serve a long prison term for a crime he did not commit. He worried that he would not see his children. This caused him to start drinking more alcohol. He believed that this was his last chance to live without constraint before going to prison. He felt that he would be convicted, imprisoned and labeled as a criminal for the rest of his life.

24. Defendant Lafferty wrote a police report about Mr. Santiago's arrest and caused him to be charged with serious crimes: trafficking in cocaine and trafficking in cocaine in a school zone. Defendant Lafferty knew the charges were false.

25. The police report omitted any mention of an informant being involved in the investigation.

26. Defendant Lafferty's police report was a fabrication designed to justify his arrest of Mr. Santiago. In writing the police report, Defendant Lafferty included many knowingly false statements and omitted material facts to give a false impression about the circumstances of Mr. Santiago's arrest. The police report falsely claimed that Mr. Santiago behaved like a drug dealer by repeatedly circling an area of downtown Lowell in his car and suspiciously looking around as he drove. The report falsely claimed that Mr. Santiago's car swerved on Westford Street and crossed the yellow line which, according to the false report, gave the police cause to stop the car and inquire. The report falsely claimed that the car had "excessive air fresheners," a detail fabricated by Defendant Lafferty to claim that Mr. Santiago exhibited signs of being a drug dealer. The report did not mention that FA and FB had planted evidence on suspects in the past. The report did not mention that FA or FB had placed the drugs in the gas cap compartment of Mr. Santiago's car.

27. Defendant Lafferty knowingly filed a false police report to hide his illegal conduct and the illegal conduct of his informant, FA, in framing Mr. Santiago for drug trafficking.

28. At the time of Mr. Santiago's arrest, FA had worked as a confidential informant for members of the Lowell Police Department for about ten years. In February 2012, FA worked primarily as a confidential informant for Defendant Lafferty.

29. At the time of Mr. Santiago's arrest, FB worked with FA to furnish information to members of the Lowell Police Department. On information and belief, FB would provide information to FA, who would then provide that information to Lowell police officers. On information and belief, Defendant Lafferty and other Lowell police officers knew that FA worked together with FB to provide information.

30. Vice squad officers like Defendant Lafferty investigate violations of gun and narcotics laws. They typically work in civilian clothing and frequently work with confidential informants. Members of SIS typically work together in teams.

31. Defendant Lafferty had been a detective in the SIS for approximately seven years at the time of Mr. Santiago's arrest.

32. Defendant Lafferty had used FA as an informant for many years. Defendant Lafferty testified in another criminal case that he had used FA as an informant in more than fifty cases.

33. FA had received substantial rewards for working as an informant for Defendant Lafferty and other Lowell police officers.

34. On information and belief, Defendant Lafferty and other Lowell police officers were aware that FA was engaged in crime—including dealing drugs in Lowell—while he was also working as an informant for the Lowell vice squad. Defendant Lafferty and other Lowell police officers allowed FA to commit crimes because he assisted them as an informant.

35. In early 2013, FB met with officers from the Massachusetts State Police about working for them as an informant. He boasted about his skill and experience in planting evidence. FB told the state police that he had planted evidence for Lowell police officers.

36. FB told the State Police about his work with FA planting evidence in Mr. Santiago's car.

37. The State Police immediately understood that FA and FB could not be used in criminal investigations because FB admitted that they planted evidence. It would have been obvious to any competent police officer that FA and FB were not reliable informants. The State Police reported this information about FA and FB to the Middlesex County District Attorney's office.

38. On March 6, 2013, the criminal charges against Mr. Santiago were dismissed when the District Attorney's office filed a nolle prosequi stating that the case should be dismissed in the interests of justice.

39. Only after the charges were dismissed did Mr. Santiago's criminal defense attorney learn that FB had cited his work planting evidence in Mr. Santiago's car when he bragged about his skill to the State Police. While the criminal case was pending the Middlesex District Attorney's office had not notified Mr. Santiago's attorney that police officers had used an informant.

40. Defendant Lafferty and other Lowell police officers led FA and FB to believe that planting evidence on suspects was a skill that Lowell police officers valued. FA and FB considered their skill at planting evidence to be valuable to police officers.

41. Defendant Lafferty knew that FA was able to predict the location of illegal guns and drugs with a level of accuracy that was too good to be true.

42. Defendant Lafferty knew that FA, either by himself or together with FB, had planted illegal drugs on people then reported the location of the drugs to Lafferty or other SIS members.

43. In the alternative, Defendant Lafferty recklessly disregarded facts that would have led a reasonable, properly trained police officer to believe that FA had planted evidence on people and then informed on those people to police officers.

44. Defendant Lafferty failed to testify truthfully at motion hearings and trials in order to prevent disclosure of his use of informants and his unlawful techniques. In some cases, including Mr. Santiago's case, Defendant Lafferty concealed his use of an informant entirely to avoid scrutiny of the informant's credibility.

45. Defendant Lafferty failed to keep proper records relating to his use of FA as an informant. This includes records relating to payments or other rewards provided to FA in exchange for information.

46. Mr. Santiago suffered emotionally as a result of being charged with a serious crime that he did not commit. He was handcuffed and held in custody on arrest and again after arraignment. For over a year, Mr. Santiago had false felony charges hanging over him. He feared that additional false charges would be brought. He felt helpless and hopeless, knowing that he had been set up but expecting that no one would believe him. He feared he would be convicted. Whatever the outcome, he had been publically branded as a drug trafficker.

CLAIMS

COUNT I 42 U.S.C. § 1983 Claim Against Defendant Lafferty

47. The above paragraphs are incorporated by reference.

48. Defendant Lafferty used FA as a confidential informant on at least fifty cases.

49. Defendant Lafferty arrested Mr. Santiago without probable cause based on evidence he knew or should have known was placed in Mr. Santiago's car without his knowledge.

50. Defendant Lafferty led an effort to frame Mr. Santiago for a crime he did not commit.

51. Defendant Lafferty deprived Mr. Santiago of his well-established constitutional rights to be free from arrest without probable cause and to be free from an unreasonable seizure of his person under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment and his right to due process of law under the Fourteenth Amendment.

52. As a direct and proximate result of Defendant's actions, Plaintiff suffered the damages described above.

COUNT II 42 U.S.C. § 1983 Claim Against The City Of Lowell

53. The above paragraphs are incorporated by reference.

54. The City of Lowell allowed an unwritten policy or custom to develop in the Lowell Police Department of permitting paid police informants to plant evidence on suspects.

55. The Lowell Police Department had a written policy on the use of confidential informants in place by December 1989. The written policy on the use of confidential informants required review of informant activity, recording interactions with informants, keeping records of payments to each informant, and keeping track of the informant's rate of success. The written policy is designed to prevent corrupt practices by informants and police officers.

56. The Lowell Police Department ignored its written policy on the use of informants until 2013, when the Essex County District Attorney's office began investigating the Lowell Police Department's use of FA and FB as confidential informants. For more than twenty years, the police department did not maintain proper records or follow other safeguards on the use of informants by its police officers.

57. On information and belief, FA had participated with Defendant Lafferty and with other Lowell police officers in planting evidence on a number of people in Lowell before he planted evidence on Mr. Santiago. FA either planted evidence himself or arranged for FB to plant evidence.

58. On information and belief, Lowell police officers in the SIS were aware that FA and FB were willing to plant evidence on suspects. This violation of the Constitution was tolerated and encouraged by the officers because of their mistaken belief that the ends justified the means.

59. The Lowell Police Department has a policy or custom of failing to properly investigate allegations of misconduct by its police officers who violate the rights of people in Lowell and of failing to discipline officers for these violations. This includes failing to investigate allegations that police officers used unreasonable force on civilians and allegations that informants or police officers had planted evidence on criminal suspects. This policy or custom has led Lowell police officers to believe that they can violate the United States Constitution with impunity because they will not be disciplined for their misconduct.

60. The Lowell Police Department has a policy or custom of failing to properly investigate allegations of misconduct when Lowell police officers are sued for civil rights violations. The City of Lowell and its police department fail to investigate allegations of police misconduct in civil suits unless the City itself is sued. Most police departments investigate allegations against individual officers. Lowell's policy or custom of ignoring these allegations delays proper investigation of the police officers' conduct and sends the message that Lowell police officers will not be disciplined for misconduct that results in civil litigation.

61. The Lowell Police Department allowed its police officers, particularly those in the Special Investigations Section, to perform their work with the view that the ends justify the means. This way of thinking became a custom in the police department so that police officers felt that

making arrests and obtaining convictions while violating the United States Constitution was an acceptable way of performing their work. As a result, Lowell police officers felt that using confidential informants to plant evidence on people would be accepted by the Lowell Police Department and the City of Lowell even though it violated the Constitution and laws of the United States and the Commonwealth of Massachusetts.

62. These policies and customs of the City of Lowell were the moving force behind FA and FB planting drugs in Mr. Santiago's car and Defendant Lafferty's resulting violations of Mr. Santiago's constitutional rights to be free from arrest without probable cause and to be free from an unreasonable seizure of his person under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment and his right to due process of law under the Fourteenth Amendment.

63. As a direct and proximate result of Defendants' actions, Mr. Santiago suffered the damages described above.

COUNT III Tort of Malicious Prosecution Against Defendant Lafferty

64. The above paragraphs are incorporated by reference.

65. Defendant Lafferty caused criminal proceedings to be instituted against Mr. Santiago without probable cause and with malice as defined by state tort law. The proceedings terminated in Mr. Santiago's favor.

66. As a direct and proximate result of Defendant Lafferty's conduct, Mr. Santiago suffered the damages described above.

WHEREFORE, Plaintiff requests that this Court:

1. Award compensatory damages;
2. Award punitive damages against Defendant Lafferty;

3. Award the costs of this action, including reasonable attorneys' fees; and,

4. Award such other further relief as this Court may deem necessary and appropriate.

JURY DEMAND

A trial by jury is hereby demanded.

RESPECTFULLY SUBMITTED,

For the Plaintiff,
By his attorneys,

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Date: September 3, 2013